

**APPLICANTS:**  
**Steve & Barb Clancy**

**REQUEST:** Variance to permit an above-ground swimming pool and shed within the required front yard setback in the B2 District

**HEARING DATE:** February 7, 2007

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**  
**Case No. 5580**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** Steve Clancy

**CO-APPLICANT:** Barb Clancy

**LOCATION:** 1100 Harkins Road – Lands of Harvey E. Senft, Pylesville  
Tax Map: 9 / Grid: 2F / Parcel: 204  
Fourth (4th) Election District

**ZONING:** B2 / Community Business District

**REQUEST:** A variance, pursuant to Section 267-39B, Table XI, of the Harford County Code, to permit an above-ground pool and shed within the required 30 foot front yard setback in the B2 District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

For the Applicant testified Jeremy Clancy, who identified himself as a nephew of the Applicant Steve Clancy.

Mr. Clancy explained that in the year 2006 the Applicants had begun the process of obtaining a building permit for an addition to their home. At that time, and for the first time, the Applicants discovered that a shed, pool and garage had been constructed within the applicable 30' front yard setback required in the Applicants B2 zoning district. To exacerbate their situation the Applicants, unknowingly, erected a gazebo next to the pool, also within the 30 foot front yard setback.

Mr. Clancy described the subject property as being 2.8 acres in size, improved by a single family home, a shed, and the improvements described above. A review of the site plan shows the property as being quite long – 985 feet – and unusually narrow – about 130 feet at its deepest. The property is also subject to two front yard setbacks, lying directly between Harkins Road and McFadden Road, and having access to both roads. Furthermore, a review of the site plan reveals that the property is encumbered by a 30 foot road improvement right-of-way for McFadden Road.

## **Case No. 5580 – Steve & Barb Clancy**

Mr. Clancy explained that his uncle and aunt cannot construct the addition until the issue of the improvements which encroach upon the required setback is resolved. The pool cannot easily be moved as it is full of water and its movement would require a major construction effort. Furthermore, the pool is located in what is the only appropriate spot for such a pool, given the mixed topography of the area and the vegetation which covers most of the property. The attached garage, built by a prior owner, is on a foundation and cannot be moved. The gazebo itself could be moved but, again, Mr. Clancy suggests it is located on the only practical area given the topography of the property. The shed, the structure which lies closest to McFadden Road, is capable of being relocated and Mr. Clancy indicated that the Applicants will relocate the shed if required.

Steve Clancy then testified. He had personally talked to the only neighbor who would potentially be impacted by the variance. That neighbor expressed no opposition.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune described the property as being “extremely unique”. The lot is very long and very narrow, with a stream located on its westerly side. The property lies between McFadden Road on the north and Harkins Road on the south. McFadden Road is a County maintained gravel road with a 30' road improvement right-of-way which encumbers the Applicants' property. Harkins Road is a State owned highway. The lot topography ranges from rolling to steep, which drastically reduces the area in which improvements can be constructed.

Mr. McClune noted that another interesting, and unusual, feature of the property is its B2 zoning.

The Department further believes that the pool is located in the only available site. There would be no impact on any adjoining property if the variances were granted for the garage, pool and gazebo. The shed is improperly located within the McFadden Road right-of-way and must be moved.

Mr. McClune sees no adverse impact to any adjoining property owner or to the neighborhood.

There was no testimony or evidence presented in opposition.

### **APPLICABLE LAW:**

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

*“Variances.*

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*

## **Case No. 5580 – Steve & Barb Clancy**

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
  - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The subject property is almost a text book definition of the word “unusual”, as used in the land use context. The lot itself is extraordinarily long and shallow. Additionally, it is encumbered by two front yard setback requirements as it adjoins both McFadden Road and Harkins Road. This 2.81 acre lot is also characterized by rolling to steep topography; a stream on its west side; and a 28,000 square foot septic reserve area running throughout the middle portion of the property almost immediately adjoining the house and the proposed addition. The property is also zoned B2. There is, in fact, probably nothing about the lot which is not unusual.

The Applicants suggest that the garage is impossible to relocate, and the pool itself is difficult if not impossible to relocate. They ask for a variance to allow the pool, garage and gazebo to remain in their present locations which would require substantial variances to the 30' front yard setback. Nevertheless, these structures will continue to remain at least 30' from the Harkins Road front yard lot line.

**Case No. 5580 – Steve & Barb Clancy**

It is accordingly found that the many and varied unusual features of the Applicants' property cause them a practical difficulty. That practical difficulty is the inability to maintain and enjoy a pool and garage, modest in appearance and similar to many others throughout Harford County. The proposed variances are the minimum necessary to alleviate this difficulty. The Applicants difficulty is also, clearly, not of their own doing as the improvements were constructed by a prior owner.

It is further found that the proposed variances, if granted, would have no adverse impact upon adjoining neighbors or property.

**CONCLUSION:**

Accordingly, it is recommended that the requested variances for the garage, pool and gazebo be approved subject to the following conditions:

1. The Applicants shall obtain all necessary permits and inspections for the garage, pool, gazebo and shed.
2. The existing shed shall be moved outside of the road improvement right-of-way.

Date: March 19, 2007

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on APRIL 16, 2007.**